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Incyte Genomics  
3160 Porter Drive  
Palo Alto, CA 94304

In re Application of	:	
Tang et al.	:	
Application No. 09/744,196	:	
PCT No.: PCT/US99/16637	:	DECISION
Int. Filing Date: 21 July 1999	:	
Priority Date: 22 July 1998	:	
For: Molecules Associated	:	
With Cell Proliferation	:	

This is in response to the "FAX" filed by applicants on 27 February 2003 and the fax filed on 29 August 2003.

### **BACKGROUND**

This international application was filed on 21 July 1999, and claimed an earlier priority date of 22 July 1998. A Demand electing the United States was filed prior to the elapse of 19 months from the priority date. Accordingly, the 30 month time period for paying the basic national fee in the United States expired at midnight on 22 January 2001.

On 16 January 2001, applicants filed *inter alia* the basic national fee.

On 15 February 2001, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicants, indicating that this international application had become abandoned with respect to the United States for failure to pay the full U.S. basic national fee by "20 months."

On 28 February 2001, applicants filed papers arguing that the Notification of Abandonment was improper.

On 24 September 2001, a decision vacating the Notification of Abandonment mailed on 15 February 2001 was mailed to applicants.

On 15 October 2001, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the submission of an executed oath or declaration, a surcharge under 37 CFR 1.492(e), and an initial or substitute computer readable form (CRF) of the "Sequence Listing."

On 24 January 2002, applicants filed a "Response.." including a CRF of the sequence listing, a surcharge under 37 CFR 1.492(e) and a declaration.

On 27 March 2002, a Notification of Defective Response (Form PCT/DO/EO/916) was mailed to applicants, indicating that the required executed oath or declaration had not been received. Specifically, "the last name of the 5th inventor is different on the declaration, than on the international application."

On 12 February 2003, a Notification Of Abandonment (Form PCT/DO/EO/909) was mailed to applicants, indicating that this international application had become abandoned with respect to the United States national stage under 35 U.S.C. 371 for failure to timely reply to the Notification of Missing Requirements mailed on 15 October 2001.

### **DISCUSSION**

Review of the declaration filed on 24 January 2002 reveals that it lists a joint inventor (Chandra ARVIZU) whose name does not appear in the published international application, and that it does not list a joint inventor (Chandra PATTERSON) whose name does appear in the published international application. Counsel attributes the discrepancy to the alleged circumstance that "Chandra Patterson was her correct name at the time the PCT application was filed. Since that time, she has married and changed her name to Chandra Arvizu. Since that was her name at the time she executed the declaration, she signed that name. Attached is an Application Data Sheet requesting correction of her name on the application." As part of the fax filed 29 August 2003, applicants have provided a signed statement by Chandra Arvizu, attesting to her name change due to marriage. In that this is clearly more than a mere typographic error or phonetic misspelling of applicant's name, a proper petition (and fee) under 37 CFR 1.182 is required to resolve this matter. Accordingly, the \$130.00 petition fee is being charged to counsel's deposit account no. 09-0108, as authorized by the fax filed on 27 February 2003.

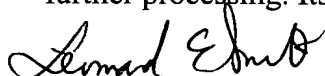
Review of the record reveals that the fax filed on 27 February 2003 included a copy of a "Certificate of Transmission" dated 29 April 2002, and that the fax filed on 29 August 2003 includes a verified statement that the 27 February 2003 fax is a true copy of correspondence originally transmitted on 29 April 2002. In accordance with 37 CFR 1.8 (a)(1), the correspondence is considered to have been timely filed in response to the Notification of Missing Requirements of 15 October 2001 and the Notification of Defective Response of 27 March 2002. As such, the Notification of Abandonment mailed on 12 February 2003 was inappropriate, and it is hereby **VACATED**.

### **DECISION**

The petition is **GRANTED**.

The \$130.00 petition fee is being charged to counsel's deposit account no. 09-0108.

This application is being forwarded to the National Stage Processing Branch for further processing. Its date under 35 U.S.C. 371(c)(1), (2) and (4) is **24 January 2002**.



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